

**TAN AH BEE v. FOO KOON THYE
AND ANOTHER.**

[Orig. Civil Juris. (Carey, J.) April 18, 1947]

Chinese Marriage — Secondary wife — Evidence to substantiate claim to be secondary wife.

The plaintiff in this case applied to the Court for revocation of letters of administration granted to the defendants and for substitution to the plaintiff and the first defendant. She claimed to have been a secondary wife of the deceased Yeoh Boon Tean, and she claimed to be entitled as a widow of the deceased jointly with the other widow, the first defendant, to administer the deceased's estate. The whole issue therefore depended on whether or not the plaintiff was a secondary wife of the deceased for if she was, she had an equal right with the first defendant to the grants of letters of administration.

Held, on a full consideration of the facts and the law that the plaintiff had failed to prove that she was a secondary wife of the deceased.

Cases referred to :—

- (1) *Cheang Thye Phin and others v. Tan Ah Loy* (1920) A.C. 369.
- (2) *Six Widows Case* (1908) 12 S.S.L.R. 120.
- (3) *In re Will of Tay Geok Teat, Sunny Tay v. Seow See Neo and another*, 3 M.L.J. 83.
- (4) *In re Seow Im Swee (deceased), Seow Beng Hay v. Seow Soon Quee and another* 2 M.L.J. 111.
- (5) *Khoo Hooi Lcong v. Khoo Hean Kwee* (1926) A.C. 529 at p. 543.
- (6) *In re Lee Choon Guan (deceased), Lew Ah Lui v. Choa Eng Wan and others* 4 M.L.J. 78.

MOTION.

Ong Huck Lim for the plaintiff.

R. D. Hume and Mrs. B. H. Oon for the defendants.

Carey, J. :—Upon a motion by the plaintiff for revocation of letters of administration granted to the defendants and for a grant in substitution to the plaintiff and the 1st defendant, it was ordered that the matter should proceed as an action in Court.

The plaintiff claims to have been a secondary wife of the deceased and as such to be now a widow of the deceased and entitled jointly with the other widow, the 1st defendant to administer the deceased's estate.

The whole issue therefore depends on whether or not the plaintiff was a secondary wife of the deceased, for, if she was she has an equal right with the 1st defendant to the grant of letters of administration.

The guiding principles in a question of this nature seem to be well established and have been expounded

at great length in several cases in this Court, and, inasmuch as there is no material conflict in such decisions of any relevancy in the present case, it would be mere waste of time were I to do more than refer to them in a summary manner.

It is established that a Chinese man may have as many wives as he may be disposed to. Usually he has a principal wife and may have several secondary wives as well. No precise ceremony of marriage is requisite in the case of a secondary wife, but there must be some evidence of intention and some recognition of the status of wife in order that a secondary marriage may be established (*Cheang Thye Phin and Ors. v. Tan Ah Loy*⁽¹⁾, *Six Widows Case*⁽²⁾, *In re Will of Tay Geok Teat, Sunny Tay v. Seow See Neo and another*⁽³⁾, *In re Seow Im Swee (deceased), Seow Beng Hay v. Seow Soon Quee and another*⁽⁴⁾).

There is the general presumption in favour of marriage where parties have cohabited as man and wife over a period of years.

Of course such presumption is immediately rebutted by proof that one of the parties cohabiting is not free to contract a marriage with the other, for instance where the man is already the lawful husband of another woman or the woman is already the lawful wife of another man (*Khoo Hooi Leong v. Khoo Hean Kwee*⁽⁵⁾).

In the present case the plaintiff, who was the principal wife of another man from before 1932 until his death in January 1937, claims to have started to cohabit with Yeoh Boon Tean, the deceased man, in 1932 (vide particulars furnished). Though it is conceded that after the death of her husband, continued cohabitation with Yeoh Boon Tean could give rise to the presumption in favour of the marriage of the plaintiff with Yeoh Boon Tean, it could not give retrospective effect to such presumption. One might perhaps go so far as to say that, in a case such as the present one, the fact that one party was not free to contract a second marriage detracts somewhat from the value of the presumption when the incapacitated party does become free. It might even be argued that something indicative of an intended change in the former status was essential in order for the presumption to arise on continuance of a cohabitation which could not give rise to the presumption initially.

When one appreciates that a secondary wife may be acquired with so little formality and when acquired, she and her children, if any, in the event of an intestacy, share in the estate of the late husband, there is, if marriage is to remain a recognised honourable estate, an urgent necessity to ensure that a mistress or

kept woman and her children, if any, should not step in to minimize the shares on distribution of the legal wives and children of the deceased.

The parties appear to accept what was propounded in the case of *In re Lee Choon Guan Deceased, Lew Ah Lui v. Choa Eng Wan and others*⁽⁶⁾, viz., that in order to prove a Chinese secondary marriage (a) long continued cohabitation, (b) an intention to form a permanent union and (c) repute of marriage must be established.

Reviewing the evidence on these lines I find that the plaintiff met Yeoh Boon Tean at least eleven years before his death in 1943, when she was the principal wife of one Pau Kim Heng who died in January 1937. From the time of their meeting Yeoh Boon Tean provided a house for the plaintiff and continued to do so up till the time of his death. He used to visit the plaintiff daily in the daytime and/or evening, but never spent a night under the same roof as she did. He always spent his nights in the house of his principal wife at 19, Logan Road, except for a few nights spent occasionally with his secondary wife, the 1st defendant at the house he provided for her. Yeoh Boon Tean was therefore keeping three residential establishments going, visiting at two daily and sleeping at night at his house where his principal wife and adopted children lived.

Foo Gek Ling his principal wife had no children and, it is suggested, because of this she would be sensitive about Boon Tean taking other wives. Anyhow, the secondary wife (the 1st defendant) and her children were not presented to the principal wife. They lived separately and, so far as is known, the principal wife did not even know of their existence. As regards the plaintiff, the position was the same and similarly the plaintiff was unknown to the secondary wife, the 1st defendant, who succeeded the principal wife in Boon Tean's house in Logan Road. The excuse of barrenness for non-introduction of an additional wife did not arise however in the case of the 1st defendant and the plaintiff, for the 1st defendant bore three sons and one daughter for Boon Tean.

There was thus, long continued cohabitation up till his death by Boon Tean with the plaintiff in the house he provided for her, but not in his family house, to which she had never been. Such cohabitation would also be consistent with the plaintiff being merely a kept mistress and unless recognition of the status of secondary wife can be proved such cohabitation is not sufficient to my mind to establish plaintiff's claim. The indications are that Boon Tean intended a permanent union of some sort with the plaintiff in that

from the time he met her until his death he provided for her and cohabited with her.

The question therefore falls to be decided on whether or not the intention of the deceased Boon Tean was that the union between him and the plaintiff should constitute her a secondary wife. Such intention can only be ascertained from the conduct of Boon Tean and the plaintiff and the existence or absence of repute as to the plaintiff being the secondary wife of Boon Tean, which latter is necessarily dependent to some extent on a further enquiry as to the foundation therefor.

Now let us examine the evidence to see what support there is for the plaintiff's claim. She herself says that when she and Boon Tean met at a local amusement park they arranged he should take her as his wife and support her until his death. He told her he had a principal wife and a secondary wife. Two months later he provided a house for the plaintiff and in the meanwhile he had been visiting her at her grandmother's house.—Here one may note that the plaintiff was not than free (soluta) by reason of her existing marriage.—He paid her \$300/- per month and the house rent. She did not meet either the first wife or the second wife and did not meet Boon Tean's mother until they met at Batu Ferringhi 2 or 3 years after plaintiff and Boon Tean had lived together. When the first wife and later the mother of Boon Tean died, she, the plaintiff was very ill and could not attend their funerals, but she went into mourning on each occasion. Boon Tean used to take her out in his car in the evenings and to his rubber estates, when he visited there. In rubber dealers' shops at Kulim and elsewhere he used to meet friends and introduce plaintiff as his wife. Three days before his death, he became ill, either at or near her house and was taken immediately to his own house in Logan Road, the plaintiff not accompanying him as her brother-in-law would not permit her to go. On Boon Tean's death she did not go to his house for fear of quarrels, but her daughter, she says, went.—That is her daughter Pau Saw Choo by her former husband; she had no child by Boon Tean—she says she joined Boon Tean's funeral procession on the way to the cemetery, but did not wear sack-cloth, as should a wife, for fear of abuse by those who lived in his house and his second wife. Boon Tean was a wealthy man with numerous distinguished friends to whose houses he used to take plaintiff to visit. One such friend was Ooi Gim Phai.

The caretaker of "Sunnyside", a bungalow of Boon Tean's at Batu Ferringhi, says Boon Tean used to bring plaintiff there and pass a few nights there with her, referring to her as his wife.

One Chew Peng Seng, a merchant and agent of an Insurance Co., says he was a friend of Boon Tean, but in cross-examination it appeared he was first the friend of the plaintiff. Boon Tean told him plaintiff was his wife. He has never been to the family house of Boon Tean.

Cheah Heng Hoon a widow-lady, friend of the plaintiff and Boon Tean, whose mother and Boon Tean's were cousins, says that Boon Tean said to her, referring to the plaintiff: This is your new sister-in-law". She took the plaintiff's daughter to Boon Tean's house on his death.

Lau Swa Keat, who is the husband of plaintiff's sister, had once been to Boon Tean's house before he brought him home ill just prior to his death. He refers to the plaintiff as the wife of Yeoh Boon Tean and spoke of her to 1st defendant when they met on that occasion as "Mrs. Yeoh Boon Tean".

These are the main items adduced in evidence to support the plaintiff's allegation that she was reputed to be the wife of Yeoh Boon Tean.

On the other hand the 1st defendant, her eldest son (the 2nd defendant), her daughter and Boon Tean's eldest sister say they never heard of the plaintiff until she intervened in this matter and never saw her until she appeared in Court. As regards the 1st defendant and her children this is only in keeping with the position as between the principal wife and the secondary wife and her family. On the death of the principal wife however it is alleged that secondary wives should attend her funeral and also they should attend the funeral of the mother of the husband. The plaintiff admits that this was her bounden duty and that owing to illness she was not present at either. She further admits that she did not go to the house of Boon Tean to attend his funeral, but joined the procession on the way to the cemetery, and did not wear sack-cloth, as a wife should do. Fear that the deceased's adopted children and the 1st defendant and her children would quarrel with her, prevented her doing so. If secrecy from the senior wife were to be maintained until the next in succession could step into her shoes, this is not surprising, and it seems that Boon Tean did not want his principal wife to know that one junior to her did exist. The 1st defendant proves this, and it is not unreasonable to assume that his attitude was similar in respect of additional secondary wives. There is thus little help to be found on this ground.

No ceremony is necessary for a secondary marriage, but if certain formalities are observed they lend

weight to support an alleged marriage. To illustrate this, when Boon Tean married the 1st defendant she performed the custom of combing of the hair and he took her to the temple to pray and then to his mother's house, his mother being then the head of his family, and there she paid her respects to Boon Tean's mother by kneeling and serving tea to her and calling her "mother-in-law" and received from her a red packet (a present). There was nothing of this nature as regards the plaintiff and, as I have mentioned, there could not be while her first husband lived. The only presentation to Boon Tean's mother occurred when they met at Batu Ferringhi and that was an enforced one, when the old lady asked: "who is this?", on seeing the plaintiff, and Boon Tean replied: "what do you expect? She is my wife". That too would seem to have occurred during the lifetime of the plaintiff's first husband and is of little value.

The value of "repute", I take it, must be dependent on how it is acquired and through whom it is acquired and it would be increased by being acquired amongst people who might reasonably be expected to have some interest in the matter and/or the parties.

Had Boon Tean taken the plaintiff when she was *soluta* to his mother's house and introduced her as wife to his mother and brothers and sisters, such act would have weighed heavily in favour of the plaintiff. But the plaintiff admits she was never in that house. Had Boon Tean met the plaintiff's mother, who is still living, one would have expected the fact to be alleged and the mother to come and give evidence in support of the plaintiff's claims. Plaintiff's mother was not called as a witness. Though the plaintiff alleges Boon Tean had a large number of distinguished friends, to whose houses he used to take her to visit, she could only name one Ooi Gim Phai, and, when the latter was called by the defence, he denied that the plaintiff visited his house and any knowledge that Boon Tean had a secondary wife.

As regards the statement of the caretaker of "Sunnyside" that Boon Tean said plaintiff was his wife, this man's evidence is not reliable, for he says Boon Tean and plaintiff stayed at "Sunnyside" and used to pass nights there, whereas plaintiff herself says Boon Tean did not stay there with her and went home however late it might be.

The rent collector merely says he knows that plaintiff was Boon Tean's wife, but does not indicate his source of knowledge.

Cheah Beng Hoon, having said her mother was a cousin of Boon Tean's mother, wound up her cross-examination by saying she was not very certain of the

relationship. The impression her evidence gave is that she wished to appear in the role of a relative of Boon Tean, but in cross-examination showed herself to be primarily an old friend of the plaintiff. Though she visited the house of Boon Tean's mother she did not know the name of his elder sister, who lived in that house and with whom she was on good terms.

The evidence of plaintiff's daughter does not help one way or another as regards repute.

When plaintiff's brother-in-law brought the dying Boon Tean to the principal wife's house, I am disposed to accept that he said Boon Tean had collapsed in Yachiyo Park and omitted to mention the plaintiff's house, for Boon Tean seemingly had been in that park that night and that fact was elicited by the defence. He would thus avoid mentioning the plaintiff.

Is the evidence adduced by the plaintiff sufficiently convincing to establish her claim? Frankly, when the plaintiff's case was closed I felt that it was not, save in respect of the one item to be proved, namely, long continued cohabitation and any intention that might be inferred therefrom. Anything elicited in the defendant's case only supports the plaintiff's in regard to the fact that the deceased did not disclose to his principal wife that he had another wife, and therefore there would be reluctance on his part to make known more than was unavoidable his relationship with the plaintiff.

When Foo Gaik Lin, the principal wife, died, Boon Tean erected a tombstone at her grave and caused inscription to be made thereon in Chinese and English. After his principal wife's name, date of death and age he had his own name inscribed and that of his secondary wife the 1st defendant, leaving the date of death and age to be filled in when ascertained, and thereafter were the letters "R.I.P.". The name of the plaintiff does not appear on that stone and space for it is not reserved in the section where the wives' names and Boon Tean's are recorded. One would not have expected this if, as the plaintiff alleges, she would move up to the family house at Logan Road on the death of the 1st defendant and succeed her as wife. Boon Tean died a natural death and could not know that his second wife (the 1st defendant) would survive him, so, had he been consistent, space for the plaintiff's name should have been reserved.

The grave was only for three bodies, but on the tablet at the other side of the central one are inscribed the names of Boon Tean's children, including those adopted. They could not be buried in that grave, so their names must be there merely as a matter of record.

Why was there to be no record of plaintiff's name, if she were a secondary wife of Boon Tean? The indication is that he did not consider her as such.

Yeoh Boon Tean took the 1st defendant and his children by her to his mother's house. His elder sister knew them and used to visit 1st defendant in the lifetime of the principal wife. She did not know plaintiff.

Had plaintiff been a secondary wife of Boon Tean, would she not have insisted on taking her rightful place at his funeral and being robed in sack-cloth, the proper attire for a widow on such an occasion in accordance with a not unlawful custom? It seems to me a Chinese secondary wife should be made of sterner stuff than is the plaintiff.

I am satisfied that the plaintiff was not held out as his wife by Boon Tean to any appreciable extent and only to those to whom the making of the representation entailed no great significance. That the circumstances of the presentation to the mother of the deceased make it of little value as evidence. That the only alleged member of the deceased's family, who claims to know plaintiff as wife of Boon Tean, is not sure of her relationship with that family. That whether or not in any particular instance it was through accident of illness or otherwise, the plaintiff did not comply with any of the customs ordinarily observed by a secondary wife, the fact remains that she did not conform with such customary observances.

On a full consideration of the facts and the law there is no doubt in my mind that the plaintiff has failed to prove that she was a secondary wife of Yeoh Boon Tean.

Action Dismissed.

LIM POON POK v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Willan, C.J. F.M.S., Murray-Aynsley, C.J. Singapore and Pretheroe, J.) September 23, 1947]

Criminal Procedure Code, F.M.S. Section 407 (ii)
— *Whether this Section confers a general power of forfeiture — Second-hand Dealers Ordinance 1947.*

In this case the applicant, Lim Poon Pok was convicted by the Magistrate at Ipoh for an offence contrary to Section 12 of the Second-hand Dealers Ordinance, 1947 in that he failed to keep proper books of account. He was fined \$100/- in default of payment, two months rigorous imprisonment, and the goods in respect of which he failed to keep proper accounts were ordered to be forfeited by the Magistrate under S. 407 (ii) of the F.M.S. Criminal Procedure Code. The case was referred to the Court of Appeal by the Public Prosecutor under S. 53 of the F.M.S. Courts Enactment (Cap. 2) as the question of whether S. 407 of the F.M.S. Criminal